

REMARKS/ARGUMENTS

Claims Status

Claims 1, 2, 4-26, 28 and 29 are pending. Claims 1, 4-7, 10-12, 15-17, 19, 20, 22, 24 and 26 are currently amended. Claims 3 and 27 are currently canceled without prejudice. Claim 29 is added and finds support in the specification: page 9, last line, to page 10, line 6. Claim 1 is amended to include the subject matter of original claim 3. The remainder of the amended claims are amended to remove multiple dependencies. No new matter has been entered.

§112, 2nd paragraph, Rejection

Claim 27 is rejected as being an improper “use claim.” As this claim is canceled, this rejection has been rendered moot.

§102(b) and §103(a) Rejections

The claimed invention has been rejected as follows: (i) claims 1, 2, 5, 7, 10, 11, 27 and 28 are rejected as anticipated by Kawasaki (JP 1996-08266211); (ii) claims 12, 15-17, 19, 20-22, 24 and 26 are rejected as obvious in view of Kawasaki; (iii) claims 3, 4, 8, 9, 13, 14, 18, 23 and 25 are rejected as obvious in view of the combination of Kawasaki and Nelson (US 4,456,626); and (iv) claim 6 is rejected as obvious in view of the combination of Kawasaki and JP ‘030 (please note that there is a typographical error in the Office Action with respect to the JP reference but appears to be referring to JP 58-183030). Applicants respectfully traverse these rejections.

As independent claim 1 now includes the subject matter of original claim 3 which is not subject to the rejections (i), (ii) and (iv) as described above, and all other remaining

independent claims (i.e., claims 8, 9, 13, 14, 18 and 25) are also not subject to rejections (i), (ii) and (iv), it is believed that rejections (i), (ii) and (iv) have been rendered moot.

Applicants make no statement with respect to the propriety of these grounds of rejection and in no way acquiesce to the same. Solely to expedite examination, Applicants have included the subject matter of original claim 3 in independent claim 1. As such, Applicants respectfully request withdrawal of rejections (i), (ii) and (iv).

With respect to rejection (iii), Applicants submit that the claimed invention is non-obvious in light of the combination of Kawasaki and Nelson for at least the following reasons.

The present invention relates to a fat and oil composition for bakery products and a bakery product using the same, for example bread, cake and frozen dough for bread. More specifically, the claimed fat and oil composition comprises 50-86 parts by weight of (A) edible fat and oil, 10-35 parts by weight of (B) an emulsifier, and 0.1-10 parts by weight of (C) a humectant, wherein (A)/(B) is 6.5 or less, 75 wt% or more of the fatty acid residues of (A) are unsaturated fatty acid residues, and at least 80 wt% of the emulsifier constituting (B) is glycerin fatty monoester and propylene glycol fatty monoester (see claim 1).

Independent claim 1 is drawn toward the fat and oil composition as described above, whereas independent claims 8, 9, 13, 14 and 18 are drawn toward bread comprising/made from the fat and oil composition, and independent claim 25 is drawn toward cake comprising/made from the fat and oil composition.

Kawasaki discloses fat and oil compositions for bakery products using 64 wt% of rapeseed salad oil (“component (A)” with melting point of -10°C) and 26 wt% of glycerol fatty acid ester and lecithin (“component (B)”). However, it should be noted that Kawasaki does not disclose “at least 80% by weight of the emulsifier constituting (B) is glycerin fatty monoester and propylene glycol fatty monoester” as claimed. Furthermore, this deficiency of

Kawasaki has been recognized by the Office in the outstanding Office Action on page 6, paragraph 20.

In light of the recognized deficiency of Kawasaki with respect to the make-up of the emulsifier (B), the Office looks to Nelson and asserts that the emulsifier systems of Kawasaki and Nelson are “equivalent” and as such it would have been obvious to one skilled in the art to replace one emulsifier system with the other (see Office Action, page 6, paragraph 20).

In rebuttal to the Office’s allegations of equivalence, Applicants note that the emulsifiers disclosed by Nelson are hydrophilic (see col. 2, lines 11-13) whereas the emulsifiers disclosed by Kawasaki are lipophilic/hydrophobic¹. Accordingly, contrary to the Office’s allegations, such emulsifiers having virtually opposite solubilities in polar/non-polar solvents would not be considered “equivalent” to one skilled in the art. Furthermore, the emulsifiers of Nelson and those of Kawasaki would be considered to reside on opposite ends of the HLB scale. Accordingly, the emulsifiers of Kawasaki being lipophilic/hydrophobic with HLB values of approximately 3 would be considered water-in-oil emulsifiers (“W/O emulsifiers”) whereas the emulsifiers of Nelson would be consider oil-in-water emulsifiers (“O/W emulsifiers”). The Office has provided no motivation for one skilled in the art to “replace” a W/O emulsifier with a O/W emulsifier as alleged, rather the Office has merely concluded that it would have been obvious to do so. Accordingly, the Office has failed to meet its burden with respect to putting forth a *prima facie* case of obviousness.

Notwithstanding the above, even if a *prima facie* case of obviousness did exist, which it does not, Applicants submit that the claimed invention provides for an unexpected advantage over the prior art. Namely, an advantage including improved uniform dispersion of the claimed humectant in the oil component (A) of the invention, thereby resulting in an

¹ Applicants note that it is common knowledge to one skilled in this art that glycerine fatty monoester, like that disclosed by Kawasaki, is a lipophilic compound having an HLB value of approximately 3.

Application No. 10/560,172
Reply to Office Action of November 17, 2009

improved staleness-prevent effect (see specification: 2nd full paragraph of page 9, to top of page 11).

Conclusion

Applicants submit that all now-pending claims are in condition for allowance.

Applicants respectfully request the withdrawal of the rejections and passage of this case to issue.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.
Norman F. Oblon



Justine M. Wilbur
Attorney of Record
Registration No. 59,678

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 07/09)